

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **KERRY COOPER, M.D.**

4 Holder of License No. **28488**  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

Board Case No. MD-09-1083A

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

(Letter of Reprimand and Probation)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on  
8 April 14, 2010. Kerry Cooper, M.D., ("Respondent") appeared with legal counsel, Daniel P.  
9 Jantsch, before the Board for a Formal Interview pursuant to the authority vested in the  
10 Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of  
11 Law and Order after due consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

13  
14 1. The Board is the duly constituted authority for the regulation and control of  
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of License No. 28488 for the practice of allopathic  
17 medicine in the State of Arizona.

18 3. The Board initiated case no. MD-09-1083A after receiving a complaint  
19 regarding Respondent's care and treatment of a 30 year old female patient ("LH"), alleging  
20 inappropriate conduct.

21 4. On June 3, 2009, LH met with Respondent to discuss her back pains  
22 following her orthopaedic surgery, abdominal problems and weight loss. They discussed  
23 LH's marriage for several minutes. Respondent then put his hand on LH's thigh and  
24 rubbed it in a comforting manner. He proceeded to examine her back and started to rub  
25 her shoulders. After she told him that shoulder rubs never helped, he stopped.

Respondent stood up and kissed LH and smoothed back her hair with his hand. He ended by giving her a hug.

5. At the Board staff's request, Respondent underwent a psychosexual evaluation, which revealed that Respondent was safe to practice medicine. The evaluator recommended that Respondent complete a boundaries course, have a chaperone present for visits with female patients and therapy to help develop insight into the dynamics associated with his misconduct. In an addendum to this report, the evaluator clarified that the chaperone recommendation was only applicable to a physical examination of a female patient in a private practice setting and did not apply to a hospital or academic setting.

At his formal interview, Respondent did not deny the allegations against him, but did state that he only intended to comfort LH, not to make a sexual advance. He conceded that the patient had perceived his conduct differently, and he expressed remorse for his actions. He requested that the Board not require that he have a chaperone present when seeing female patients because such a restriction would have a devastating effect on his ability to continue practicing medicine. He also stated that he normally did have another healthcare professional in the room when he examined a female patient, but did not do so in the case of LH because he was not conducting a physical exam.

#### **CONCLUSIONS OF LAW**

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(27)(z)(ii) – (“engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee’s spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, “sexual conduct” includes:

- (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
- (ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.
- (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.”)

## ORDER

**Based upon the foregoing Findings of Fact and Conclusions of Law,**

IT IS HEREBY ORDERED:

1. Respondent is issued a Letter of Reprimand.
2. Respondent is placed on probation for two years with the following terms

and conditions:

- (a) Respondent shall, within 30 days of the effective date of this order, enter a contract with a Board pre-approved monitoring company to provide all monitoring services. Respondent shall bear all costs of monitoring requirements and services.
- (b) Dr. Cooper shall immediately obtain a treating psychotherapist approved by the monitoring company and shall remain in treatment with

1 the psychotherapist for the duration of the Probation unless modified by  
2 the Board. After twelve months, Dr. Cooper may petition the Board to  
3 terminate the psychotherapy requirement.

4 (c) Within six months of the effective date of this Order obtain 15-20 hours  
5 of pre-approved Category I CME in a boundaries course. The CME  
6 hours shall be in addition to the hours required for the biennial renewal  
7 of licensure. The physician shall be responsible for all monitoring  
8 costs.

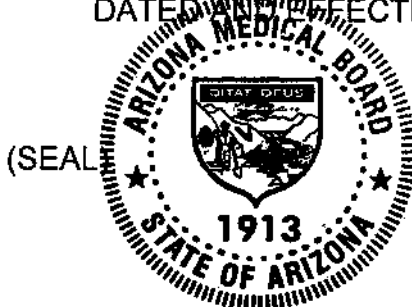
9 3. The Board retains jurisdiction and may initiate new action based upon any  
10 violation of this Order.

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13 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

14 Respondent is hereby notified that he has the right to petition for a rehearing or  
15 review. The petition for rehearing or review must be filed with the Board's Executive  
16 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The  
17 petition for rehearing or review must set forth legally sufficient reasons for granting a  
18 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after  
19 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,  
20 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

21 Respondent is further notified that the filing of a motion for rehearing or review is  
22 required to preserve any rights of appeal to the Superior Court.

23 DATED AND EFFECTIVE this 12<sup>th</sup> day of June, 2010.



ARIZONA MEDICAL BOARD

1 By Amade Belh  
2 Lisa S. Wynn  
3 Executive Director

4 ORIGINAL of the foregoing filed this  
5 10<sup>th</sup> day of June, 2010 with:

6 Arizona Medical Board  
7 9545 East Doubletree Ranch Road  
8 Scottsdale, Arizona 85258

8 Executed copy of the foregoing  
9 mailed by U.S. Mail this  
10 10<sup>th</sup> day of June, 2010 to:

11 Daniel Jantsch  
12 Olsen, Jantsch & Bakker  
13 7243 N. 16<sup>th</sup> Street  
14 Phoenix, Arizona 85020

15 Chris B...  
16 Arizona Medical Board Staff  
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